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Robert Thompson  
General Counsel  
Public Employment Relations Board  
1031 18<sup>th</sup> Street  
Sacramento CA 95814-4174

Dear Mr. Thompson,

I addressed what I believed to be some glaring deficiencies in PERB Agency Fee Regulations (Section 32290 et. seq.) when I attended the Board meeting on December 9, 2004. I've given the matter quite a bit of thought and on the following pages are suggestions for revision of the Regulations to ensure justice for all.

The Hudson decision spelled out only general guidelines as to issues of chargeable and non-chargeable expenses, notification, challenging the amount of the fee and escrow of amounts reasonably in dispute. PERB has done a decent job at promulgating regulations to protect the agency fee payer but there are details that I believe have been overlooked. The devil is in the details and I have seen him. Specific matters of procedure designed to implement the law in several instances consist of actions that cannot be verified under PERB procedures.

Reliance on caselaw is murky at best as differing opinions can come from different jurisdictions. Additionally, this puts the individual employee who has been wronged at a distinct disadvantage. PERB Regulations are written in concise and understandable language and an individual can, with little effort and money, file an Unfair Practice Charge to seek redress in an expeditious fashion.

Should an individual have to file in court, the procedures are very difficult to understand. Paying for legal counsel at \$200 per hour to collect \$30 to \$50 is not feasible. An exclusive organization knows this and would like to see all individual actions go to a court where they can wear down an individual with their financial and legal muscle. Can you imagine the burden on the courts if hundreds or even thousands of sincere, determined individuals were educated on how to file pro se over \$2 or \$3 of forced speech? The jurists in these actions may chide these individuals for filing over what they consider a de minimus amount, but they will answer back that Thomas Jefferson would himself not be forced to pay three pence to promote anyone else's ideology.

I would like to have the opportunity to discuss these issues with you, the Board and any other interested parties. I will be in Northern California the first week of March, meeting with my constituency in Davis on Thursday, March <sup>3<sup>rd</sup></sup> ~~4<sup>th</sup>~~ and I have a meeting scheduled in Sacramento tentatively scheduled for March <sup>4<sup>th</sup></sup> ~~5<sup>th</sup>~~. If either of these dates is convenient for all interested parties, please let me know.

Sincerely Yours

*Werner Witke*

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*Exclusive representatives have failed to comply with Government Code Section 3587. One has not complied with this section for four years. Accountants have ample time to massage the numbers but will be much harder pressed to engage in chicanery given the short yet reasonable time period to prepare the financial report.*

32994(b)(3)

Within 45 days of the last day for filing an objection under Section 32994(b)(2) of these regulations and upon receipt of the employees agency fee objection, the exclusive representative shall request a prompt hearing regarding the agency fee before an impartial decisionmaker and concurrently notify the agency fee objectors via signature record as encoded in Regulation 32992(c)(3).

*I have found that as a practical matter, arbitration agencies are very sloppy in their notification procedures, missing mailings to those who sent objection letters. This deprives the right of objectors to challenge in the arbitration hearing.*

32995(c)

Interest at the prevailing rate shall be paid by the exclusive representative on any amount awarded as a result of arbitration.

*The language of this section has been wrongly interpreted by some to infer that an escrow/rebate system complies with Hudson and it's predecessors. Escrow of funds that clearly are in dispute complies but rebates of funds that are clearly not in dispute are impermissible.*

32995(b)

The exclusive representative shall provide any objector requesting proof of existence of such account with any document an objector requires for such proof.

*The present regulation has no verification provision. Non compliance with the escrow provision is too easy. Objectors cannot make a prima facie case since neither the financial institution nor the union can be compelled to release this information. PERB is not an investigative body, it has no power to check for compliance. Why any exclusive representative would ever comply with 32995(a)(1) or (2) is beyond me.*